Ensuring Fair Play: Abuse Of Dominance And Intellectual Property Rights Top Of Form Bottom Of Form

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Abstract

Dominance in the market gives businesses many advantages, enabling them to change business dynamics and influence customer choices. This dominance, while used improperly, can damage clients via way of means of stifling competition and innovation. The distinct rights that intellectual property rights deliver authors and inventors over their works, on the alternative hand, lead them to critical equipment for selling innovation. Abuse of dominance and Intellectual Property rights are associated while dominant corporations make the most of their intellectual property rights to stifle competition. This article attempts to examines the feasible reasons of the subject matter, which includes inflated licensing charges, unwarranted litigation, and patent hold-up tactics. The interplay among abuse of dominance with intellectual property rights (IPR) marks a pivotal factor withinside the improvement of competition law. This article captures the essence of this complicated connection and affords a window into its complicated dynamics. It further attempts to emphasise the critical factor of convergence among those fields: the sensitive stability among selling innovation and retaining marketplace opposition receives disenchanted while dominant groups use their intellectual property rights to impede competition. Such abuse of IPR might also additionally take many unique forms, from extortionate licensing charges to pointless court cases meant to save your competition from coming into the marketplace. Case studies that function an examples from across the globe provide important insights into the rational consequences of intellectual property rights violations. The

difficulties in finding the appropriate stability are demonstrated by notable instances such as the legal actions related to Qualcomm's SEP and Microsoft's antitrust actions in the EU. Emerging technologies in the virtual age, like as biotechnology and artificial intelligence, raises new concerns about supremacy and intellectual property rights. One example of an increasing burden in 5G technology is Standard-essential patents (SEPs). Using well-known case studies and international regulatory reactions, this article also attempts to provide a brief discussion of the issues and headaches associated with the abuse of dominance within the framework of intellectual property rights. Strict regulatory scrutiny is necessary to prevent dominant marketplace contributors from engaging in anti-competitive behaviour. The conflict between preventing anti-competitive behaviour and promoting innovation through intellectual property rights safety is a fundamental dilemma. Finding a balance between the two needs is essential if one is to sell innovation and keep markets competitive. In this regard, the author attempts to highlight how crucial it is to handle the junction between rights to intellectual property and abuse of dominance in an appropriate manner. It draws attention to the necessity of prudent legislation that preserves innovative incentives while maintaining sincere competition. In order to fully utilize intellectual property rights for the goodness of society, it is imperative to achieve this delicate balance. In a global economic system that is rapidly changing, legislators, lawyers, corporations, and students must all comprehend and navigate the intricate relationship between abuse of power and intellectual property rights. This article lays the groundwork for additional investigation and debate in the article by offering a concise yet comprehensive synopsis of the key traits and problems in this intricate field.

Keywords: Abuse of Dominance, Anti-competitive Agreements, Antitrust and Competition Law, Intellectual Property Rights.

Introduction

In India, competition law is still in its infancy. The insufficiency of the MRTP Act in addressing the concurrent concerns of cartels, predatory pricing, and abuse of dominant position led to the necessity of the Competition Act, 2002. A strict law is desperately needed to safeguard the interests of buyers,

customers[1], and competitors in the rapidly changing Indian markets.

The definition's core idea is that a dominant enterprise[2] is one that possesses the authority to act unilaterally and disregard market forces, such as rivals, clients, and others. Operating independently of the dominant forces in the relevant market is made possible by a dominant position in the market. The business can significantly impact the relevant market because it has the ability to influence consumers, competitors, and the relevant market in its favour.

By creating enforceable property rights that: enable intellectual property[3] owners to appropriate value derived from their intellectual property; facilitate the commercialization of inventions and ideas; and promote public disclosure, intellectual property laws encourage innovation. By keeping firms motivated to innovate and conduct research and development in order to: – be the first to enter a market; – increase market share, competition fosters innovation.

The objectives of intellectual property law and antitrust law are similar in that the former gives the right to prohibit others from using an invention or creative expression. Antitrust law protects property rights while opposing exclusionary behaviour that impedes competition on its merits. The two laws' ultimate objectives are the same: to encourage competition and innovation

This article examines the features and aspect of having a dominant position in pertinent markets. In light of recent occurrences involving intellectual property rights, it also addresses the topic of abuse of dominance and whether or not these laws are applicable in India.

The discussion of how India's competition law and intellectual property rights[4] (IP) interact has gained more traction over the past year. Apart from managing disputes pertaining to fair,

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1 Mark Furse, "Competition Law of the EC and UK" (6th edn., Oxford University Press, New York, 2008) pg 353

2 Rod Falvey and Foster Neil, "The Role of Intellectual Property and Technology Transfer and Economic Growth: Theory and Evidence", accessed 5 July, 2011

3 The term includes copyright, patent, trademark, designs, geographical indications, neighbouring rights and a wide variety of other activities which was previously outside the scope of its ambit.

4 Arutyun Arutyunyan, "Intellectual Property Law vs. Essential Facility Doctrine: Microsoft vs. Commission" available at http://www.ies.ee/iesp/No4/Arutyunyan.pdf accessed on 23/03/10

reasonable, and non-discriminatory (FRAND) terms and jurisdictional issues, the Competition Commission of India (CCI) has been concentrating more on matters like the influence of standard-setting on competition law and the exploitation (or misuse) of intellectual property[5]-related legal procedures by powerful businesses to suppress competition.[6]

IP-related business practices are subject to the same general prohibitions on anticompetitive agreements and abuse of dominance under the Indian Competition Act, 2002 (the Competition Act) as non-IP-related conduct. The Competition Act only mentions intellectual property rights in passing through an explicit carve-out in Section 4(2)(c) of the Act, which acknowledges anyone's right to establish reasonable[7] and necessary safeguards for the protection of intellectual property rights, particularly those granted by certain named Indian IP statutes. However, since unilateral behaviour is not covered by this carve out, IP holders run the risk of being investigated under the Competition Act's Section 4 (abuse-of-dominance) provision.[8]

Intellectual property law and competition law might initially seem to have different applications. Nonetheless, the growing quantity of cases involving Intellectual Property and Competition Law Property Rights (IPR) issues contradict this. In particular, the Competition Commission of India's (CCI) case law demonstrates that the purview of these two disciplines occasionally overlap and objectives clash.

The discussion of how India's competition law and intellectual property rights (IP) interact has gained more traction over the past year. The Competition Commission of India (CCI) has been paying more attention to issues like the impact of standard-setting on competition law and the use (or abuse) of IP-related

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[5] Richard J. Gilbert and Alan J. Weinschel, "Competition Policy for Intellectual Property: Balancing Competition and Reward" available at http://elsa.berkeley.edu/users/gilbert/wp/Antitrust_and_IP.pdf accessed on 31/04/10

[6] Spencer Weber Waller &William Tasch, 'Harmonizing Essential Facilities and Refusals to Deal' available at http://www.ftc.gov/bc/international/docs/abbottipchina.pdf accessed on 05/05/10.

[7] Salil Arora, 'Does Commercial Exploitation of Intellectual Property Rights Inherently Result in Anti-Competitive Practices?' (2012) Research Paper for the Competition Commission of India

[8] https://thelawreviews.co.uk/digital_assets/d8692bd5-442a-4470-ad8e-1aeac28d304d/TIPAR2-full-bookPDF.pdf

judicial processes[9] by dominant enterprises to stifle competition, in addition to handling jurisdictional questions and disputes involving fair, reasonable, and non-discriminatory (FRAND) terms. IP-related business practices are subject to the same general prohibitions on anticompetitive agreements[10] and abuse of dominance[11] under the Indian Competition Act, 2002 (the Competition Act) as non-IP-related conduct. The Competition Act only makes reference to intellectual property rights through an express carve out that acknowledges anyone's right to impose reasonable and necessary restrictions on the use of intellectual property, as long as those restrictions are specifically granted under certain recognized Indian IP statutes. However, since unilateral behaviour is not covered by this carve out, IP holders run the risk of being investigated under the Competition Act's Section 4 (abuse of dominance) provision.

Competition Law & IPR

The primary goal of intellectual property rights (IPR)[12] is to promote innovation by offering the necessary incentives, according to a United Nations Conference on Trade and Development (UNCTAD) document titled, "Examining the interface[13] between the objectives of competition policy and intellectual property." The goal is accomplished by giving inventors a limited period of exclusive rights over their inventions, which enables them to recoup their investment in research and development.

Instead, the goals of competition law are to increase consumer welfare[14], economic growth, and efficiency. In order to

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[9] Arutyun Arutyunyan, "Intellectual Property Law vs. Essential Facility Doctrine: Microsoft vs. Commission" available at http://www.ies.ee/iesp/No4/Arutyunyan.pdf accessed on 23/03/10.

[10] Weijun, Z. (2008). Abuse of Intellectual Property Rights and the Prevention Measures: Retrieved from: http://www.miplc.de/research/general_projects/completed_projects/zhang_abuse/ on July 21, 2009

[11] https://thelawreviews.co.uk/digital_assets/d8692bd5-442a-4470-ad8e-1aeac28d304d/TIPAR2-full-bookPDF.pdf

[12] Allan Asher, Public Lecture on 'Interface between the Indian Competition Act 2002 and the IPR Laws in India' (2009)

[13] Which exist at the point of promoting and fostering innovation, efficiency and economic growth.

[14] Poorvi & Madhooja, 'Competition Law and Intellectual Property Laws' (2009) Legal Service India <http://www.legalserviceindia.com/article/l307-Competition-

accomplish them, competition[15] law limits private property rights to a certain degree (for example, by restricting the ability of undertakings to merge) in order to benefit the community. Since competition boosts competitiveness and fosters innovation, it is thought to be beneficial to the economy[16]. Regulatory agencies typically take a "workable competition" stance when limiting property rights due to competition-related concerns.

Workable competition acknowledges that monopolies exist in almost every market and that it is the responsibility of the government to make sure there is enough competition among businesses to safeguard consumers from unfair business practices.

Three essential components of healthy competition are highlighted by Clark: (1) competition between vendors, (2) buyers' "free option" to purchase from other vendors, and (3) sellers' attempts to match or surpass the allure of competitors' products. Therefore, while intellectual property rights (IPRs) protect private rights over inventions, competition law protects the interests of the market and the larger community by restricting private rights that could jeopardize the well-being of the community as a whole. But in the end, both IPR and competition law acknowledge that advancing innovation leads to increased consumer welfare.

Exception to IPR under Section 3(5) of the Indian Competition Act 2002

The Indian Competition Act 2002 is intended to respect intellectual property rights. However, the Act allows for the possibility of taking legal action if the CCI determines that IPRs have an appreciable adverse effect on competition (AAEC).

More precisely, the Indian Competition Act of 2002's Section 3(5) includes an exception clause regarding the use of IPR that

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Law-and-Intellectual-Property-Laws.html> accessed 3 March 2014

[15] Cornelius Dube, " Intellectual Property Rights and Competition Policy" (CUTS International, June 01, 2008) available at http://www.cuts-international.org/pdf/viewpointpaper-IPRs-CompPolicy.pdf accessed on 29/04/10

[16] Alden F. Abbott, "The Harmonization of Intellectual Property Rights and Competition Policy: A Unified Approach to Economic Progress" available at http://www.ftc.gov/bc/international/docs/abbottipchina.pdf accessed on 20/04/10

permits the innovation's exclusive rights to be used reasonably. "Reasonable use" refers to the Act's Section 3(5), which only permits IP holders to place "reasonable conditions" on their licenses in order to protect their intellectual property[17] without giving rise to problems under competition law.

In fact, unlike the previous Monopolies and Restrictive Trade Practices (MRTP) Act of 1969, India's Competition law limits the abuse of dominance in general rather than outright prohibiting it. The Indian Competition Act was passed with consideration for the nation's post-privatization and liberalization economic growth. Since "command-and-control" policies have given way to open market policies, "monopolies" in and of themselves are no longer inherently bad, though legitimate abuse of them is.

However, Section 4(2) of the same Act, which specifies that there shall be an abuse of dominant position if the enterprise imposes unfair and discriminatory conditions or prices in the purchase and/or sale of goods, places a limit on the exception clause of Section 3(5) of the Indian Competition Act 2002.

As a result, the use of IPR holders' rights is restricted to prevent harm to consumers. This implies that while granting licenses for intellectual property, owners of intellectual property cannot unjustly impose limitations on innovations. There isn't a set list of limitations that are considered "unreasonable," so this assessment must typically be done case-by-case. For instance, Sections 83(f) and (g) of the Patent Act, 1970 state that the patented invention must be made reasonably accessible to the public at reasonable prices, and that the patentee or person deriving title or interest on the patent may not engage in activities that "unreasonably" restrict trade or negatively affect international transfer of technology.

Conflict between IPR & Competition Law

"All forms of Intellectual Property have the potential to raise Competition Policy/law problems," states the High-Level Committee Report on Competition Policy and Law[18]. The full range of rights to engage in productive or commercial activity is granted to holders of intellectual property; however, this

[17] Richard J. Gilbert and Alan J. Weinschel, "Competition Policy for Intellectual Property: Balancing Competition and Reward" available at http://elsa.berkeley.edu/users/gilbert/wp/Antitrust_and_IP.pdf accessed on 31/04/10.

[18] D.P Mittal, Taxmann's Competition Law and Practice (2nd edn., Taxman Allied Services (P.) Ltd 2008), 216.

does not include the ability to impose restrictions or monopolies. Therefore, even though the report recognizes that intellectual property rights (IPR) have the legitimate purpose of preventing others from using an inventor's invention without the required "licence," it also recognizes that IPR exercise may give rise to anti-competitive behaviour[19].

Because of this, the CCI, which also has jurisdictional powers over competition-related matters, hastily claimed jurisdiction in a number of cases before national courts where there was a dispute between IPR and competition law[20]. National courts also typically gave it this kind of jurisdiction. The Bombay High Court held in Aamir Khan Productions Pvt Ltd v Union of India[21] that the CCI has the requisite jurisdiction to handle cases concerning IPR and competition law. Similar to this, the Bombay High Court determined in Kingfisher v. CCI[22] that the CCI is qualified to handle any matter that comes before the Copyright Board of India. In the FICCI Multiplex Association of India v. United Producers/Distributors Forum[23] case, the CCI's jurisdiction was likewise maintained. Ultimately, the Delhi High Court ruled in Ericsson v. CCI[24] that the Indian Patents Act of 1970 contained no language that could be interpreted to explicitly or implicitly supersede the CCI's jurisdiction.

The misuse doctrine found in American copyright, trademark, and patent law is an expansion of the equity law-based unclean-hand doctrine. IP misuse refers to attempts to extend the term of intellectual property (such as tying) and can be used as a defense in lawsuits alleging IP infringement. Under European Law, intellectual property rights may be abused when right-holders violate the EU[25] treaty's free movement or competition policies while exercising their property rights. Examples of such violations include unilateral refusals to license (abuse of dominant position) and strict licensing agreements (Weijun, 2008). Additionally, TRIPS permits its

[19] Broadcom Corp. v. Qualcomm Inc., 501 F.3d 297, 314 (3d Cir. 2007).

[20] Anthony F. Baldanza and Charles Todd, 'Intellectual Property Rights: Friends or Foes' (2006) Competition and Intellectual Property Rights Seminar of Ontario Bar Association

[21] Aamir Khan Productions v. Union of India (2010) Bom 112

[22] Writ petition no 1785 of 2009

[23] Case No 1 of 2009, CCI order dated 25 May 2011

[24] (W.P.(C) 464/2014 & CM Nos. 911/2014 & 915/2014)

[25] Steven D. Anderman and Hedvig Schmidt, The Interface between Intellectual Property Rights & Competition Policy, (3rd edn, Cambridge University Press, 2007)

members to take appropriate action to guard against the misuse of IP enforcement procedures and to stop right-holders from abusing their rights and resorting to unfair trade restrictions or practices that negatively impact international technology transfer.

In general, intellectual property rights (IPR) are legal privileges bestowed upon the authors and proprietors of works that are the products of human inventiveness. These may come from the fields of industry, science, literature, or the arts. They grant their owners the authority to omit preventing others from having temporary access to or use of protected content. That additionally grants them the right to later license others to use the innovation when they themselves cannot participate in extensive commercial exploitation, among other reasons.

The WTO's TRIPS Agreement, which addresses trade-related aspects of intellectual property rights, establishes minimum requirements for a variety of intellectual property (IP) regulations.

Creating a set of rules that encourage competition in regional and national markets, along with laws (competition law), court rulings, and regulations expressly meant to stop anti-competitive business practices and needless government interference, avoiding market power abuse and concentration, are all part of competition policy.[26] Competition law encourages new players to enter markets, preventing artificial barriers to entry and working to eliminate monopolization of production processes[27]. Maximizing producer and consumer welfare as well as production efficiency are among the goals of competition policy. A business environment that is supportive of well-crafted and successful competition laws enhances both static and dynamic efficiencies, facilitates the efficient allocation of resources, and prevents the abuse of market power.

In accordance with UK laws and customs, intellectual property rights are abused in the following ways: though is not restricted to, the subsequent actions: Refusal to work and not get a license, working inadequately and declining a license, declining a license unilaterally and imposing a competition restriction, declining a license conditionally (a vertical restriction), and

[26] K Sera Sera Digital Cinema Pvt. Ltd. v. Digital Cinema Initiatives, LLC & Ors. (Case No. 30 of 2015)

[27] Arutyun Arutyunyan, “Intellectual Property Law vs. Essential Facility Doctrine: Microsoft vs. Commission” available at http://www.ies.ee/iesp/No4/Arutyunyan.pdf accessed on 23/03/10.

jointly declining a license (horizontal restriction), dishonest IP rights enforcement, or improper use of enforcement protocol. The right holders use various forms of license refusal as a means of exercising their rights. Consequently, there is less trade, less competition, or a negative impact on technology transfer. impacted. These kinds of "abuse" practices ought to be outlawed by law.

Measures to Prevent Abuse of Intellectual Property Rights

According to various laws (IP law, competition law, procedure law, and so on), different countries have different policies in place to prevent the abuse of intellectual property rights. Typically, these include patent forfeiture, non-enforcement of intellectual property rights until misuse is eliminated (equitable defense), license endorsement, and mandatory licensing. With the exception of patent forfeiture, which is hardly ever used these days, the other three measures are various kinds of involuntary licenses. The equitable defense provides a defendant in the litigation with a temporary, free, non-voluntary license to the infringer.[28]

The right license is an unrestricted, mandatory license that is not determined on a case-by-case basis. The compulsory license is a typical no voluntary license authorized by the government, and it will be evaluated based on each case's unique merits in accordance with competition or patent law. In conclusion, the non-voluntary license serves as the main defense against the exploitation of intellectual property.

One of the topics that is causing a lot of discussion regarding the application of the rules against abusing a dominant position to situations where deals are refused is whether or not owners of intellectual property (IP) rights should have more protection than owners of tangible assets. Gleklen bases his case for increased protection on the notion that intellectual property laws provide an unqualified right of exclusion. It has been proposed that there is no justification for treating a refusal to license intellectual property differently from any other refusal to deal because the ability to exclude is a fundamental aspect of all property. First of all, this argument greatly oversimplifies the problem. The right to exclude from private property has never been absolute, unlike in the case of intellectual property, where the statutory right to exclude is

[28] M/s Bull Machines Pvt. Ltd. v. M/s JCB India Ltd. & Ors. (Case No. 105 of 2013).

absolute. For instance, the common law doctrine[29] of easements limits this right. The application of the disciplines found in Sections 3 (anticompetitive agreements) and 4 (abuse of dominance) of the Competition Act is inevitably linked to the growing conversation in India regarding IP-related antitrust considerations.

The CCI's 2014 examination of whether the practice of several domestic and multinational passenger vehicle manufacturers (PVMs) of selling spare parts and diagnostic kits only through authorised dealers resulted in "denial of market accesses to independent repairers and after-sales service providers, or constituted a "refusal to deal" brought the topic of IP-related antitrust issues in India to the forefront of discussion. The CCI summarily held that PVMs' decision not to supply spare parts and diagnostic kits to third-party or non-authorised dealers and after-sales repair and service providers results in denial of market access and that IP rights do not offer any protection[30] from a finding of infringement under Section 4 of the Competition Act. This ruling ignores the more significant issue of the primacy of IP holders' right to use and commercialize an IP-protected technology in any way they deem appropriate.10. As a result, in the event that the CCI determines that the owner of the IP-protected technology holds a dominant position in a relevant market, it will be possible to grant third parties "compulsory licensing" of the technology.

Examining the refusal to deal claim, the CCI's approach seems to prioritize short-term foreclosure effects over the respect that comparatively more developed antitrust jurisdictions, like the US, accord to the primacy of intellectual property rights, which are crucial for long-term innovation and competition. Using overly simplistic comparisons, the CCI concluded in summary that PVMs' intellectual property rights would not be violated if diagnostic tools were sold on the open market.[31]

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[29] These essential elements were: (1) control of essential facility by a monopolist; (2) a competitor's inability practically or reasonably to duplicate the essential facility; (3) the denial of the use of facility to the competitor; and (4) the feasibility of providing the facility.

[30] Keith E. Maskus and Mohammad Lahouel, 'Competition Policy and Intellectual Property Rights in Developing Countries: Interests in Unilateral Initiatives and a WTO Agreement' (1999) accessed 30 March 2011

[31] https://thelawreviews.co.uk/digital_assets/d8692bd5-442a-4470-ad8e-1aeac28d304d/TIPAR2-full-bookPDF.pdf

Are IPRs and Competition Policy Objectives Conflicting?

IPRs and competition are typically seen as two domains with opposing goals. The reason is that intellectual property rights (IPRs) seem to go against the goals of level playing fields and static market access that competition laws seek to achieve, particularly the prohibitions on horizontal and vertical restraints and the abuse of dominant positions, by drawing boundaries within which rivals may exercise legal exclusivity (monopolies) over their innovations. Depending on the lack of alternatives in the relevant market, this legal monopoly may result in market power or even a monopoly as defined by competition law[32]. Nonetheless, guaranteeing the exclusion of competing companies[33] from using protected technologies and their derivative goods and procedures does not automatically confer market power on their holders, since competition laws forbid the abuse of dominance rather than dominance itself. Rarely can the protected technology be completely separated from the process that has been in place, so other technologies are frequently available that could be used as viable alternatives to effectively constrain the potential for monopoly-style behaviour on the part of IPR holders There are instances where IPRs and competition are complementary rather than antagonistic. Intellectual property rights (IPRs) offer economic agents incentives to innovate in technology and/or creative expression by granting innovators the right to prevent others from using their ideas or forms of expression. This will increase the amount of competition in the future market and foster dynamic efficiency, which is defined by rising product quality and diversity—another goal of competition policy[34]. IPRs may also spark a race to innovate as businesses try to take advantage of first mover advantages in order to obtain IP protection. Consequently, in order to encourage innovation and guarantee its competitive exploitation, both IPRs and competition laws are required. Thus, it is imperative to guarantee their coexistence.

[32] Anthony F. Baldanza and Charles Todd, 'Intellectual Property Rights: Friends or Foes' (2006) Competition and Intellectual Property Rights Seminar of Ontario Bar Association

[33] Taylor, Martyn D, 'International competition law: a new dimension for the WTO?' (Cambridge University Press 2009)

[34] Sachin Kumar Bhimrajka, Study on relationship of competition policy and law and Intellectual property rights, <http://www.cci.gov.in/images/media/ResearchReports/sachin_report_20080730103728.pdf> accessed 2 March 2014

Implications for Regulatory Authorities

Regulatory bodies must first make sure that intellectual property rights are not misused. The general considerations in paragraph 1 of the Preamble of the TRIPs agreement, when read with Article 8(2), permit Members to take appropriate actions in accordance with the TRIPs to stop rights holders from abusing their intellectual property .In order to stop the abuse of intellectual property rights, two main strategies have been used: compulsory licensing, which is the state-imposed and enforced involuntary contract between a willing buyer and an unwilling seller, and parallel imports, which are goods that are brought into a country without the permission of the owners of the patent, trademark, or copyright[35] after they have been lawfully sold elsewhere. Article 31 of TRIPs provides for the grant of compulsory licenses, under a variety of situations, such as:

1. The public health interest; 2. National emergencies; 3. No or insufficient patent exploitation within the nation; 4. Anti-competitive behaviour by patent holders or their assignees; 5. The interest of the nation as a whole.

Second, there are numerous ramifications for the intersection of IPR and competition law that should always be considered. Competition authorities ought to base their decisions in every IPR case on a rigorous application of the rule of reason. While it is possible to apply abuse of dominance laws to intellectual property rights and pursue appropriate remedies, doing so carries a significant potential cost in terms of lessening incentives to innovate and should only be employed in extreme cases.

Another area where careful consideration of the rationale behind the application of competition laws[36] is necessary is tying and full line forcing based on intellectual property rights. This is because some newly developed technologies may not be fully beneficial or compatible with the standards found in the tied product, and competition authorities should not simply forbid patent[37] holders from connecting the sale of patented products to the purchase of goods that are not covered by the patent or whose patent protection has expired.

[35] Kumar Jayant and Abir Roy, Competition Law in India (1st edn, Eastern Law House 2008), 176

[36] Combination Registration No. C-2016/11/456, AT&T and Time Warner Inc

[37] Department of Industrial Policy and Promotion; Ministry of Commerce, Discussion Paper on Standard Essential Patents and their Availability on FRAND Terms.

Agencies tasked with promoting increased horizontal competition ought to exercise caution when responding to grant-backs, which refer to agreements whereby a licensee grants the licensor permission to utilize a portion of the licensee's intellectual property rights, typically through upgrades to the technology under license.

The limitations imposed by the legal system typically occur when an intellectual property right is in line with real market power because the owner has a de facto monopolistic level of dominance. Intellectual property rights are not considered exceptional in such a scenario. They are handled the same as any other tangible assets, or "essential facilities."[38] Even if the owners of intellectual property operate in a secondary market, they still have to deal with downstream operators. By linking or integrating their product or service in the secondary market with their intellectual property rights in the primary market, they are unable to discriminate between their own operator and a rival on the derivative market[39].

Grant-backs can have a positive impact on competition, particularly if they are non-exclusive. This is because they share the risk between the licensee and the licensor, and the licensor may receive compensation for enabling additional innovation based on or inspired by the licensed technology. Ordinary competition law should be applied using the rule of reason standard to distinguish between "pro" and "anti" competitive cases in which intellectual property rights confer the necessary market power.[40]

Conclusion

In summary, while competition authorities must ensure that intellectual property laws and competition policy coexist, they also must take into consideration the possibility that the goals of the two policies may conflict, which could have a negative impact on society's welfare. While it is a good idea to include

[38] Amitabh Kumar, 'The essential facilities doctrine' (The Financial Express, March 23,2007) available at http://www.cci.gov.in/images/media/articles/facilities_doctrine_23_3_2007_FE_20080409111745.pdf accessed on 15/04/10.

[39] Alaska Airlines, 948 F.2d at 544; see also Hovenkamp et al., supra note 24, at 19 (stating that "withholding an essential facility is illegal only if it has the effect of foreclosing competition in the downstream market").

[40] Biocon Limited & Mylan Pharmaceuticals Private Limited v. F. Hoffmann-La Roche AG & Ors. (Case No. 68 of 2016).

exemption clauses in competition laws to support intellectual property rights, the exemption should make sure that it allows competition authorities to carefully apply a rule of reason approach, case by case, to ensure that the innovation objective—which is the basis for IPRs—does not lead to actions that violate the laws governing competition. In order to ensure coexistence, it will also be crucial that references to matching competition provisions be included when drafting IPRs in nations with competition laws. Though not essential in this context, the question of whether ownership rights in tangible and intangible property fall under the same legal category is an intriguing one. According to the Spanish Civil Code, ownership is the right to enjoy and use something, but this right is subject to the restrictions set forth by the law.

Furthermore, according to Article 33 of the Spanish Constitution, private property is subject to its "social function." Thus, subject to legal restrictions, ownership of both tangible and intangible property confers the equal right to prevent others from using or exploiting the property.

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